

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

CRL.A.No. 1183 of 2004()

SC.233/2003 of ADDL.SESIONS COURT, (ADHOC), ERNAKULAM
CP.4/2003 of JUDL.MAGISTRATE OF FIRST CLASS-II, MUVATTUPUZHA
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APPELLANT:

JOY, S/O. VARGHESE,
CONVICT NO.611, CENTRAL PRISON, KANNUR.

BY ADV. SMT.T.K.SREEKALA(STATE BRIEF)

RESPONDENTS:

STATE OF KERALA.

BY PUBLIC PROSECUTOR SRI.NOBLE MATHEW

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 24/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

Crl.A.NO. 1183 OF 2004

Dated this the 24th day of October, 2007

JUDGMENT

Koshy, J.

Wife of the accused was found murdered by strangulation in their bed room on 9.6.2002 and the appellant was charge-sheeted for committing murder and he was convicted under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life with fine of Rs.30,000/-.

2. The prosecution case is as follows: The accused married the deceased Remani on 27.6.1987. In the wed-lock two children were born and they were residing at Rajeev Gandhi Colony wherein it is alleged that the deceased Remany had developed some illicit relationship with the supervisor in her work place called Peechal Gopi. The above news reached the accused and the accused used to pick up quarrel with the wife on account of this. On 9.6.2002 at about 6.45 a.m, when there was no other person in the house, he strangled deceased Remani with a bathing towel (thorthu mundu) and committed murder when they were inside the bed room of their house situated at Rajeev Gandhi Colony in Maneed Village.

3. PW1 recorded the first information statement. According to PW1 Sub Inspector of Police, the accused came to the police station at 8.30 a.m and informed that he has killed his wife and the dead body of his wife was lying at his house and he came to the police station after locking the house and produced the key before PW1. He also stated that he had put the bathing towel on a chair in his house. PW1 took the accused along with a Head Constable to the house of the accused at Rajeev Gandhi Colony at Maneed Village. The house was locked and the door was opened. PW1 and others accompanied, could see the dead body of Remani. Father of the deceased (PW3) was present there. He identified that the deceased was his daughter. The accused was arrested from the spot and asked PW2 police constable to guard the place.

4. The case of the accused in the 313 statement was that he went for work three days ago to one Augusty Kunjhi's house for cutting rubber. When he came back and went to inside the house and called the wife, there was no reply. When he went to kitchen side, it was opened and his wife was seen dead. He immediately took an auto rickshaw and went to the police station and informed. The police took him to the Magistrate and charged the allegation of murder on him and they also assaulted him. He stated that at the place where she died he saw a shawl () which is used

by Peechal Gopi and, therefore, he has bona fide doubts that he is responsible for the murder, but, he was not aware of any illicit relationship of his wife with Peechal Gopi. Peechal Gopi is residing only 200 metres away from his house. He also stated that his children were sent to wife's house one week ago. They used to go there to live with grand-father and grand-mother. He also stated that witnesses were telling lies on the instigation of the relatives of his wife. However, he did not examine any witness to show that he was away at Parakkandam for doing rubber tapping for Augusty Kunhi.

5. PW3 is the father of the deceased who identified the dead body. He stated that the accused used to pick up quarrel with the deceased and on the previous day of the incident, the two children were sent to his house by the accused. According to the defence, such a statement was not made before the police, but, in 313 statement case of the accused also was the same. According to him, they were taken there prior to one week of the incident. PW4 gave evidence to the effect that on the previous night at 8.00 pm he saw the accused and deceased together on the road near his house. PW5 neighbour gave evidence that on 9.6.2002 at about 7.00 a.m he saw the accused in front of his house. The accused came to his house and asked for a glass of water. But as against the police statement, he did not say regarding any conversation with the

accused. PW12, wife of PW5 deposed that the accused came to his house and asked for a glass of water. According to her, at 7.30 am when she was getting ready for going to the Church, the accused came to her house and asked for a glass of water and her husband gave a glass of water and she asked the accused why he wanted water early morning. The accused told her that his Remani left him and he was also going to that place. He further stated to her husband that in spite of their friendship, why the relationship of Remani with Peechal Gopi was not disclosed to him, but they did not reply. Thereafter, they went to the Church and only on return they knew about the death. PW7 neighbour deposed that she saw the accused at about 7.00 am in front of her house. PW13, auto driver gave evidence that he took the accused in his auto rickshaw to Piravom police station and thereafter the accused was seen going along with the police in the police jeep. In 313 statement the accused also stated that he went to police station by an auto rickshaw when he saw the dead body. PW8 is a signatory of inquest report. PW9 sister of the deceased, who is residing with PW3, deposed that there was frequent quarrel between deceased and accused. According to her, the accused took children to their house on the previous day. The children were taken in an auto rickshaw for some distance and subsequently they came to the house of Pws 3

and 9. Pws 10 and 11 are the two children of the deceased Remani. They also stated that they were sent to the house of their grandfather on the previous day. Their evidence establish the fact that at the time when the incident happened, Pws 10 and 11 children were not in the house on the date of the incident and they were in the grandfather's house. Even though that is not admitted in the 313 statement, the children also stated that there was frequent quarrel between mother and father for reasons not known to them. PW14 co-worker of the deceased Remani deposed that Peechal Gopi is the Supervisor of the quarry, where PW14 and deceased were working.

6. PW15 doctor, who conducted the postmortem, issued Exhibit P5 postmortem certificate wherein it was clearly stated that the deceased died due to strangulation. According to PW15, the injuries noted on the neck of the deceased could be caused by strangulation by a towel like MO1. MO1 was collected at the time of preparation of scene mahazar from the place of occurrence. Exhibit P1 was registered by the police on the basis of the statement given by the accused. The fact that the accused informed the matter to the police station. It is also clear from 313 statement that only on getting information from the accused, the police went to the place along with the accused. Even though from Ext.P1, we can only find that the accused informed the matter of death of his wife, but,

incriminating statements against the accused in Ext.P1 cannot be used against him. The chemical examination report Ext.P12 shows that MO1 Thorthumundu seized from the house at the time of scene mahazar contained human pili and epithelial cells. The cellophane tapes taken from the neck of the deceased also shows that white cotton fibres similar to Thorthumundu was seen there. So, it is clear that deceased was strangled MO1 bathing towel in their own house where accused and deceased were staying. Presence of the accused on the previous night is proved by the deposition of PW4. Evidence of PW5, PW7 and PW12 shows that the accused was seen at early morning in front of their house. So, the evidence of children and father of deceased shows that the children were in the house of the grand-father on the date of the accident. Hence, accused and wife alone were there in the house at the time of occurrence. The evidence of Pws 3, 9, 10 and 11 shows that there were frequent quarrels between the husband and wife. There is no basis for the contention that they cannot be believed as they are close relatives. They are natural witnesses. Evidence of a witness cannot be rejected merely because he is relative as held in ***Dalip Singh v. The State of Punjab*** (AIR 1953 SC 364) and in the recent judgment dated 7.9.2007 of Apex Court in ***Kulesh Mondel v. State of West Bengal*** (2007 AIR SCW 5880). Even though the accused tried to

give a defence of alibi, he did not prove the same. No witnesses were examined for the defence and no question was put to the witnesses for the prosecution suggesting plea of alibi. It is settled law that strict proof is necessary to claim defence of alibi. The accused who takes up the plea of alibi as defence must prove the same as held by the Apex Court in **Binay Kumar Singh v. State of Bihar** (1997 SCC CrI.333). Considering the provisions of section 11 of the Evidence Act, Apex Court held in **Rajesh Kumar v. Dharamvir and others** (1997 SCC CrI.591) that plea of alibi shall be proved with absolute certainty. Here, accused failed to prove the plea of alibi.

7. When husband and wife were seen together in the night and early in the morning in the house and they were only together in the bedroom and nobody else in the house, it is for the husband to explain what happened in his house in the secrecy of the bed room. In this connection, we refer a decision of the Supreme Court reported in **Trimukh M. Kirkan v. State of Maharashtra** (2006(4) KLT 638(SC) = 2007 CrI.L.J. 20 SC) wherein it is held that when the offence is taking place inside the privacy of a house, the burden of prosecution is not heavy as is required in other cases of circumstantial evidence and it is for the accused who was present in the house to explain the circumstances regarding the death. In

Swamy Shraddananda v. State of Karnataka (2007(8) SCALE 1) the Apex Court held that when it is proved that wife is died in unnatural circumstances in her bed room, which was occupied only by her and her husband, law requires husband to offer an explanation in that behalf. In this connection the Supreme Court also considered approximately similarly in **Nikaram v. State of Himachal Pradesh** (AIR 1972 SC 2077), **State of UP v. Dr. Ravindra Prakash Mittal** (AIR 1992 SC 2045); **Balram Prasad Agrawal v. State of Bihar** (AIR 1997 SC 1830) and **State of TN v. Rajendran** ((1999) 8 SCC 679).

8. Here, the circumstances proved against the accused are complete. In the bed room the murder took place and the accused was not able to explain the circumstances and at the same time, the circumstances put forward by the prosecution regarding the frequent quarrel and motive, presence of accused and deceased alone in the house, conduct of the accused in going to the house of PW12, etc. were proved by the prosecution witnesses and hence we are in perfect agreement with the findings of the trial court. We are fully satisfied from the evidence that all the links in the chain of circumstantial evidence for convicting the accused is complete and only hypothesis possible on the basis of the evidence adduced is that appellant accused is guilty and he alone is guilty of the offence

charged. Therefore, no grounds are made out for interfering with the conviction entered into by the trial court. Only the lesser punishment of life imprisonment under section 302 IPC was imposed by the trial court. But, Rs.30,000/- is imposed as fine. Considering the financial position of the accused, the amount of fine is reduced to Rs.5,000/-. The conviction and sentence are confirmed except by reducing the fine amount of Rs.30,000/- to Rs.5,000/-, taking the financial position of the accused. The appeal is disposed of accordingly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

CRL.A.NO.1183 OF 2004

JUDGMENT

24.10.2007